IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.409 OF 2005

Prabhakar Balwant Kakade & Ors. ...Appellants

Vs.

Nabab Adamkhan Pathan & Ors. ...Respondents

Mr.Amit Borkar for the Appellants
Mr.A.I.I. Patel for the Respondent No.3.

CORAM: A.S.OKA, J.
DATED: APRIL 27,2005.

P.C.:

1. Heard Counsel appearing for the parties. The learned Counsel for the Appellant submitted that considering the successive deeds got executed by the original Plaintiff it is obvious that real intention of the parties was to create tenancy. He submitted that the admission given by the Appellants in reply to the suit notice may not be of any consequence as the Advocate who had issued reply has admitted that he had not received proper instructions from his client. It is pertinent to note that in reply to the suit notice it is specifically admitted that the transaction between the parties is of mortgage. The Appellant No.1 in the cross examination admitted that the contents of the reply to the suit notice were correct. Relying upon the admission in the reply to the suit notice and the admission in the oral evidence, the courts below have held that the transaction is mortgage and therefore decree of redemption has been passed.

2. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

3. At this stage, Shri Borkar, learned Counsel for the Appellants prays that the Appellants may be granted longer time to vacate. He submitted that the Appellants are in possession for a long time and have been carrying on business in the suit premises. The said request is opposed by the learned Counsel for the Respondent. Considering the facts and circumstances of the case, it is directed that notwithstanding the dismissal of the Second Appeal, decree for possession shall not be executed till 28th February 2006 subject to Appellants filing usual undertaking in this Court within a period of four weeks from today. If undertaking is not filed within stipulated period, decree will become executable forthwith.

Judge.